

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Darlene Hughes, individ. and as p/n/g of C.M., a minor.

DEFENDANTS

United States of America d/b/a a/k/a and/or acting through the U.S. Dept. of Health & Human Services and Greater Philadelphia Health Action, Inc. c/o The Honorable Jeff Sessions, Atty. General

County of Residence of First Listed Defendant

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James J. McEldrew, III, Esq./Thomas A. Dinan, Esq./Ian M. Bryson, Esq.
McEldrew Young, 123 S. Broad Street, Ste. 2250, Phila. PA 19109
215-545-8800**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY - <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☒ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1346(b)

Brief description of cause:

Medical malpractice committed by GPHA in Philadelphia, PA and its medical personnel and/or employees.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

Amt. in excess of \$150,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Mark A. Kearney

DOCKET NUMBER 16-4421

DATE
03/16/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 938 E. Phil Elena St., Apt. B, Philadelphia, PA.

Address of Defendant: 950 Pennsylvania Avenue NW, Washington, DC 20530.

Place of Accident, Incident or Transaction: Greater Phila. Health Action (GPHA), 5501 Woodland Ave., Phila. PA 19143.
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☐

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☐

RELATED CASE, IF ANY:

Case Number: No. 16-4421 Judge Mark A. Kearney Date Terminated: 8/26/2016

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) Federal Tort Claims Act_Medical Malpractice

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

- I, James J. McEldrew, III, Esq., counsel of record do hereby certify:
- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: March 16, 2017

Attorney-at-Law

36411

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

Attorney-at-Law

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

DARLENE HUGHES, individ. and as
p/n/g of C.M.

V.

UNITED STATES OF AMERICA d/b/a a/k/a
and/or acting through the U.S. DEPT. OF HEALTH
and HUMAN SERVICES and GREATER PHILADELPHIA
HEALTH ACTION, INC.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

March 16, 2017 <hr/> Date	James J. McEldrew, III, Esq. Thomas A. Dinan, Esq. Ian M. Bryson, Esq. <hr/> Attorney-at-law	Plaintiffs <hr/> Attorney for
215-545-8800 <hr/> Telephone	215-545-8805 <hr/> FAX Number	tdinan@mceldrewyoung.com <hr/> E-Mail Address

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

.....
DARLENE HUGHES, individually and as :
p/n/g of C.M., a minor, :

Plaintiff, :

v. :

UNITED STATES OF AMERICA d/b/a, :
a/ka/ and/or acting through the :
U.S. DEPARTMENT OF HEALTH AND :
HUMAN SERVICES and :
GREATER PHILADELPHIA HEALTH :
ACTION, INC., :
c/o The Honorable Jeff Sessions :
Attorney General :
United States Department of Justice :
950 Pennsylvania Avenue NW :
Washington, DC 20530 :

Defendant. :

Civil Action No.: _____

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff, Darlene Hughes, individually and as p/n/g of C.M., a minor, by and through
their undersigned counsel, do hereby aver the following:

JURISDICTION AND VENUE

1. This action is brought pursuant to 28 U.S.C.S. § 1346(b), the Federal Tort Claims Act, for medical malpractice committed by Greater Philadelphia Health Action, Inc., in Philadelphia, PA and its medical personnel and/or employees.

2. This Court has supplemental jurisdiction over Plaintiff's state law claims because those claims arise out of the same nucleus of operative fact as her federal law claims.

3. The venue in this district is proper pursuant to 32 C.F.R. § 750.32, as Plaintiff resides in Philadelphia, and the acts and omissions complained of occurred in Philadelphia.

PARTIES

4. Plaintiff, Darlene Hughes, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 938 E. Phil Elena Street, Apt. B, Philadelphia, PA 19150.

5. Plaintiff, C.M., who is a minor with a date of birth of August 21, 2000, is a citizen of the Commonwealth of Pennsylvania who resides with her mother, Plaintiff Darlene Hughes, at 938 E. Phil Elena Street, Apt. B, Philadelphia, PA 19150.

6. Defendant is the United States of America, for purposes of this action and for notice, and is located at the address listed in the caption.

7. Defendant at all relevant times hereto acted by and through, and is liable for, its agencies, the U.S. Department of Health and Human Services and Greater Philadelphia Health Action, Inc.

8. The U.S. Department of Health and Human Services is a federal agency that provides health care services and maintains a place of operation, headquarters, and/or business at 200 Independence Avenue, S.W., Washington, D.C. 20201.

9. Greater Philadelphia Health Action (hereinafter "GPHA"), Inc., a/k/a, t/a, and/or d/b/a Woodland Avenue Health Center, is a federally funded health center receiving federal funding through the U.S. Department of Health and Human Services, which at all relevant times maintained offices and/or a place of business at 5501 Woodland Avenue, Philadelphia, PA 19143.

10. At all times material, GPHA acted through its employees, agents, servants, and/or ostensible agents in providing medical care to the minor plaintiff, C.M., at the aforementioned

location. Its employees, acting in the scope of their federally funded employment, are deemed to be covered by the Federal Tort Claims Act.

11. Chinedum Udenze-Utah, M.D. (hereinafter “Dr. Udenze-Utah”) is a physician, who is upon information and belief was, at all relevant times, licensed to practice medicine in the Commonwealth of Pennsylvania, having a regular place of business at GHPA, 5501 Woodland Avenue, Philadelphia, PA 19143 who held herself out as a specialist in the field of pediatrics.

12. At all times material, Dr. Udenze-Utah was the employee, servant, agent, and/or ostensible agent of GPHA and acting within the scope of her federally funded employment with GPHA.

13. Annie Kotto, M.D. (hereinafter “Dr. Kotto”) is a physician, who is upon information and belief was, at all relevant times, licensed to practice medicine in the Commonwealth of Pennsylvania, having a regular place of business at GHPA, 5501 Woodland Avenue, Philadelphia, PA 19143 who held herself out as a specialist in the field of pediatrics.

14. At all times material, Dr. Kotto was the employee, servant, agent, and/or ostensible agent of GPHA and acting within the scope of her federally funded employment with GPHA.

PROCEDURAL HISTORY

15. On April 26, 2016, Plaintiff, Darlene Hughes, C.M.’s mother, in her individual capacity and as parent and natural guardian of C.M., initiated a Complaint in the Court of Common Pleas of Philadelphia County alleging C.M. suffered injuries as a result of negligent medical care provided by physicians employed by GPHA. The defendants named in the Complaint are GPHA and two of its physicians, Dr. Chinedum Udenze-Utah, and Dr. Annie Kotto.

16. After becoming aware of the Complaint, Defendants removed the action to Federal court on August 12, 2016.

17. On August 18, 2016, Defendants moved to dismiss the Complaint due to Plaintiff's failure to exhaust administrative remedies under the Federal Tort Claims Act, 28 U.S.C. § 2675(a).

18. On August 26, 2016, the Court entered an Order Dismissing Without Prejudice Plaintiff's Complaint and Denying Defendant's Motion to Dismiss.

19. On or about September 6, 2016, Plaintiff filed a claim for Damage, Injury or Death (Standard Form 95) with the U.S. Department of Health and Human Services (hereinafter referred to as "the Department").

20. Said form alleged that C.M. suffered injuries as a result of negligent medical care provided by physicians employed by GPHA.

21. The Department acknowledged receipt of the claim on or about September 22, 2016.

22. Plaintiffs complied with all requests of the Department for information in support of their claims.

23. The claims did not resolve within six (6) months after the administrative tort claim was filed.

24. On or about December 22, 2016, Plaintiff's Counsel was informed by the Department that Plaintiffs may deem the claim denied and proceed to court.

SUBSTANTIVE ALLEGATIONS

25. C.M., who is a minor with a date of birth of August 21, 2000, is the biological child of Phillip Mack and Darlene Hughes.

26. C.M. became a patient of GPHA in September 2000 and was seen for routine wellness visits.

27. In approximately March 2007, C.M.'s biological parents became separated and lived in different residences.

28. At or about that time, C.M. was residing with her mother as her primary caregiver.

29. C.M. would spend weekends with her biological father, Phillip Mack.

30. On March 2, 2011, at the age of 10 ½, C.M. presented to the GPHA center and was seen by Dr. Udenze-Utah, at which time C.M.'s mother reported that she was concerned that C.M. was being sexually abused by her father while visiting him on weekends.

31. Despite being placed on actual and/or constructive notice of C.M., a minor, being sexually abused, Dr. Udenze-Utah performed no further investigation into the allegations, failed to report the allegations to the proper City and/or State authorities, failed to gather and preserve evidence using a sexual assault kit, failed to send C.M. to the appropriate sexual assault professionals for investigation, and failed to file a formal report of suspected child abuse pursuant to Pennsylvania's Child Protective Services Law—Title 23 P.A. C.S.A. Chapter 63.

32. On March 2, 2011, Dr. Udenze-Utah failed to generate and implement a course of medical treatment to rule out that C.M., a minor, was a victim of sexual abuse at the hands of her biological father.

33. On March 2, 2011, Dr. Udenze-Utah assured C.M.'s mother that there was no evidence of sexual abuse.

34. On April 7, 2011, C.M. presented to GPHA and was seen by Dr. Kotto.

35. On April 7, 2011, C.M., a minor, was complaining of vaginal itch and discharge. Further, it was reported that C.M. was waking up in the middle of the night complaining of vaginal itch, vaginal discharge, and burning on urination.

36. During the April 7, 2011 visit, Dr. Kotto was on actual notice of the allegations of sexual abuse as it was reported at the March 2, 2011 visit and contained in C.M.'s chart, yet these entries in C.M.'s chart were not reviewed and/or correlated to the present allegations of abuse by Dr. Kotto, and Dr. Kotto failed to ascertain whether C.M. was being sexually assaulted.

37. Despite being placed on actual and/or constructive notice of C.M., a minor, being sexually abused, Dr. Annie Kotto performed no further investigation into the allegations, failed to report the allegations to the proper City and/or State authorities, failed to collect and preserve evidence using a sexual assault kit, failed to send C.M., a minor to the appropriate sexual assault professionals for investigation and failed to file a formal report of suspected child abuse pursuant to Pennsylvania's Child Protective Service Law –Title 23 P.A. C.S.A Chapter 63.

38. On the April, 7, 2011 visit, Dr. Annie Kotto assured C.M.'s mother that there was no evidence of sexual abuse.

39. On both March 2, 2011 and April 7, 2011, Defendants failed to generate and implement a course of medical treatment to rule out that C.M. was a victim of sexual abuse at the hands of her biological father, failed to perform a rape kit and/or send C.M., a minor, to appropriate sexual assault professionals

40. On both March 2, 2011 and April 7, 2011, Plaintiff, Darlene Hughes relied upon Defendants to protect her child, Plaintiff, C.M., a minor, and take proper action to safeguard C.M..

41. On both March 2, 2011 and April 7, 2011, due to Defendants' assurances that C.M.'s complaints of vaginal itching and/or burning and vaginal discharge were not caused by sexual assault, C.M.'s mother, Darlene Hughes continued to allow her daughter to visit with her biological father, Phillip Mack.

42. On October 15, 2012, C.M., a minor reported to her mother, that she was being molested by her biological father, Phillip Mack and was taken to The Children's Hospital of Philadelphia for evaluation and treatment for sexual assault.

43. Medical providers at The Children's Hospital of Philadelphia generated a formal report of suspected child abuse pursuant to Pennsylvania's Child Protective Service Law –Title 23 P.A. C.S.A Chapter 63.

44. Phillip Mack was arrested on November 28, 2012 for suspected sexual assault/child molestation of C.M., a minor.

45. On December 15, 2014, Phillip Mack pled nolo contendere to 1st Degree Felony rape of a child 8-16 years old and was sentenced to the Commonwealth of Pennsylvania Department of Corrections for 15 years.

46. On March 25, 2013, C.M., then 12 years old, was admitted to Fairmount Behavioral Health with Post Traumatic Stress Disorder with suicidal ideation, severe depression, flashbacks of the repeated assaults and anxiety. C.M. was kept for inpatient observation until April 5, 2013.

47. On May 24, 2014, C.M., then 13 years old, was admitted to Belmont Behavioral Health with Post Traumatic Stress Disorder with suicidal ideation, severe depression, flashbacks of the repeated assaults and anxiety. C.M. was kept for inpatient observation until June 3, 2014.

48. C.M. is currently undergoing psychological treatment and is medicating with various anti-anxiety and/or anti-depressant medications.

COUNT 1

**PLAINTIFFS v. UNITED STATES OF AMERICA d/b/a, a/k/a and/or ACTING
THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES and
GREATER PHILADELPHIA HEALTH ACTION, INC. – NEGLIGENCE**

49. Plaintiffs incorporate all previous paragraphs by reference as if fully set forth herein.

50. At all relevant times, Defendants United States of America, d/b/a, a/k/a and/or acting or failing to act through the Department of Health and Human Services and Greater Philadelphia Health Action, Inc. (GPHA), acted and/or failed to act by and through its duly authorized agents, ostensible agents, servants, officers, and/or employees, including but not limited to, Chinedum Udenze-Utah, M.D. and Annie Kotto, M.D., who were at all times material acting within the scope and course of their federally funded employment, agency, and/or authority.

51. At all times material hereto, Dr. Udenze-Utah and Dr. Annie Kotto had a duty to care for and treat C.M., a minor, in accordance with accepted standards of medical care and treatment.

52. At all times material hereto, the negligence of the United States of America, acting or failing to act through the Department of Health and Human Services and Greater Philadelphia Health Action, Inc. (GPHA), by and through its duly authorized agents, ostensible agents, servants, officers, and/or employees, including but not limited to, Chinedum Udenze-Utah, M.D. and Annie Kotto, M.D., who were at all times material acting within the scope and

course of their federally funded employment, agency, and/or authority, consisted of the following:

- a. failing to properly assess C.M., a minor;
- b. failing to properly diagnose C.M., a minor;
- c. failing to take proper steps to ensure C.M., a minor's safety;
- d. failing to recommend an appropriate course of treatment for C.M., a minor;
- e. failing to perform further investigation into the allegations of sexual abuse;
- f. failing to report the allegations to the proper City and/or State authorities;
- g. failing to collect and preserve evidence of sexual assault by administering a sexual assault kit on C.M., a minor;
- h. failing to refer C.M., a minor, a sexual assault counselor for investigation;
- i. failing to file a formal report of suspected child abuse pursuant to Pennsylvania's Child Protective Service Law –Title 23 P.A. C.S.A Chapter 63;
- j. failing to order that C.M., a minor shall not have unsupervised contact with her father after the abuse was reported;
- k. negligently assuring C.M.'s mother that there was no evidence of sexual abuse;
- l. failing to adhere to the express policies and protocols of the Department of Health and Human Services;
- m. failing to adhere to the express policies and protocols of GPHA;
- n. failing to adopt and implement appropriate policies, protocols, and procedures for the treatment of patients at GPHA;
- o. failing to appropriately, accurately, and timely document and complete C.M.'s allegations of sexual abuse in her medical chart;

- p. failing to select and retain competent physicians to evaluate and treat C.M.;
- q. failing to formulate, adopt, and enforce adequate rules, policies, and procedures to ensure quality care for patients, including C.M.;
- r. failing to maintain accurate medical records; and
- s. failing to properly correlate the allegations of sexual abuse from the March 2, 2011 visit on April 7, 2011.

53. As a direct and proximate result of Defendant's aforementioned conduct, C.M. continued to suffered severe, painful and/or permanent bodily injuries, including but not limited to repeated sexual assault until the abuse was reported on October 15, 2012, Post-Traumatic Stress Disorder with suicidal ideation, severe depression, flashbacks of the repeated assaults and anxiety.

54. As a direct and proximate result of Defendant's aforementioned conduct, C.M. is forced to incur medical expenses and these expenses will accrue in the future.

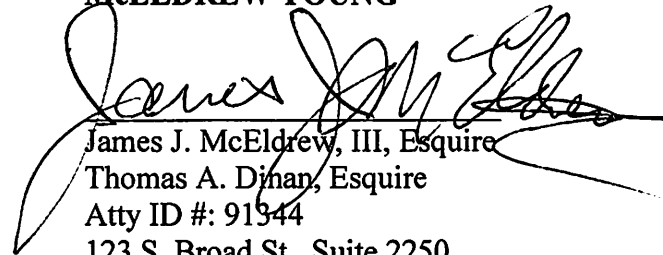
55. As a direct and proximate result of Defendant's aforementioned conduct, C.M. will experience a loss of future earning capacity.

56. As a direct and proximate result of Defendant's aforementioned conduct, C.M. has suffered significant physical and mental pain and suffering, anguish, inconvenience, loss of life's pleasures, has been admitted for inpatient, emergent psychological treatment and will continue to suffer into the future.

WHEREFORE, Plaintiffs demand judgment against Defendant in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars together with interest, costs, compensatory damages, punitive damages, and any other relief this Honorable Court deems fit to award.

Respectfully submitted,

McELDREW YOUNG

A large, stylized handwritten signature in black ink, appearing to read "James J. McEldrew, III", is written over the printed name and the first two lines of the address.

James J. McEldrew, III, Esquire

Thomas A. Dinan, Esquire

Atty ID #: 91344

123 S. Broad St., Suite 2250

Philadelphia, PA 19109

(P) 215-545-8800

(F) 215-545-8805

tdinan@mceldrewyoung.com

Attorneys for Plaintiffs

Dated: 3/16/17

VERIFICATION

I, Darlene Hughes, hereby verify that I am the Plaintiff herein and that the facts set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

Darlene Hughes P/N/G
Candance
minor

Date: 3/16/17

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

.....
DARLENE HUGHES, individually and as :
p/n/g of C.M., a minor, :

Plaintiff, :

v. :

UNITED STATES OF AMERICA d/b/a, :
a/ka/ and/or acting through the :
U.S. DEPARTMENT OF HEALTH AND :
HUMAN SERVICES and :
GREATER PHILADELPHIA HEALTH :
ACTION, INC., :
c/o The Honorable Jeff Sessions :
Attorney General :
United States Department of Justice :
950 Pennsylvania Avenue NW :
Washington, DC 20530 :

Defendant. :
.....

Civil Action No.: _____

JURY TRIAL DEMANDED

**CERTIFICATE OF MERIT AS TO DEFENDANT, GREATER PHILADELPHIA HEALTH
ACTION, INC. a/k/a, t/a and/or d/b/a WOODLAND AVENUE HEALTH CENTER**

I, James J. McEldrew, III, Esquire, Thomas A. Dinan, Esquire and Ian M. Bryson, Esquire,
certify that:

- ☒ An appropriate licensed professional had supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable standards and that such conduct was a factual cause and/or increased the risk of harm sustained by the plaintiffs;

AND

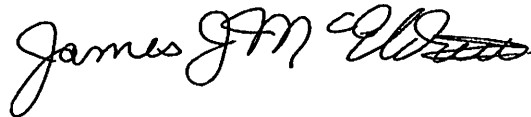
- ☒ The claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell

outside acceptable professional standards and that such conduct was a factual cause and/or increased the risk of harm sustained by the plaintiffs;

OR

- ☐ Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

McELDREW YOUNG

A handwritten signature in black ink, appearing to read "James J. McEldrew, III". The signature is fluid and cursive, with the last name "McEldrew" being more prominent.

By: _____

JAMES J. McELDREW, III, ESQUIRE
THOMAS A. DINAN, ESQUIRE
IAN M. BRYSON, ESQUIRE
Attorneys for Plaintiffs

Dated: March 16, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

.....
DARLENE HUGHES, individually and as :
p/n/g of C.M., a minor, :

Plaintiff, :

v. :

UNITED STATES OF AMERICA d/b/a, :
a/ka/ and/or acting through the :
U.S. DEPARTMENT OF HEALTH AND :
HUMAN SERVICES and :
GREATER PHILADELPHIA HEALTH :
ACTION, INC., :
c/o The Honorable Jeff Sessions :
Attorney General :
United States Department of Justice :
950 Pennsylvania Avenue NW :
Washington, DC 20530 :

Defendant. :
.....

Civil Action No.: _____

JURY TRIAL DEMANDED

CERTIFICATE OF MERIT AS TO DEFENDANT, CHINEDUM UDENZE-UTAH, M.D.

I, James J. McEldrew, III, Esquire, Thomas A. Dinan, Esquire and Ian M. Bryson, Esquire, certify that:

- ☒ An appropriate licensed professional had supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable standards and that such conduct was a factual cause and/or increased the risk of harm sustained by the plaintiffs;

AND

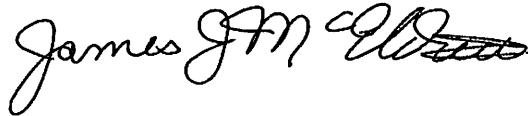
- ☒ The claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell

outside acceptable professional standards and that such conduct was a factual cause and/or increased the risk of harm sustained by the plaintiffs;

OR

- ☐ Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

McELDREW YOUNG

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By: _____

JAMES J. McELDREW, III, ESQUIRE
THOMAS A. DINAN, ESQUIRE
IAN M. BRYSON, ESQUIRE
Attorneys for Plaintiffs

Dated: March 16, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

.....
DARLENE HUGHES, individually and as :
p/n/g of C.M., a minor, :

Plaintiff, :

v. :

UNITED STATES OF AMERICA d/b/a, :
a/ka/ and/or acting through the :
U.S. DEPARTMENT OF HEALTH AND :
HUMAN SERVICES and :
GREATER PHILADELPHIA HEALTH :
ACTION, INC., :
c/o The Honorable Jeff Sessions :
Attorney General :
United States Department of Justice :
950 Pennsylvania Avenue NW :
Washington, DC 20530 :

Defendant. :
.....

Civil Action No.: _____

JURY TRIAL DEMANDED

CERTIFICATE OF MERIT AS TO DEFENDANT, ANNIE KOTTO, M.D.

I, James J. McEldrew, III, Esquire, Thomas A. Dinan, Esquire and Ian M. Bryson certify that:

- ☒ An appropriate licensed professional had supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable standards and that such conduct was a factual cause and/or increased the risk of harm sustained by the plaintiffs;

AND

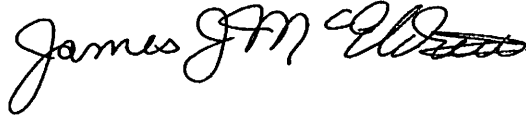
- ☒ The claim that this defendant deviated from an acceptable professional standard is based on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell

outside acceptable professional standards and that such conduct was a factual cause and/or increased the risk of harm sustained by the plaintiffs;

OR

- ☐ Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

McELDREW YOUNG

A handwritten signature in black ink, appearing to read "James J. McEldrew, III". The signature is fluid and cursive, with the last name "McEldrew" being more prominent.

By: _____

JAMES J. McELDREW, III, ESQUIRE
THOMAS A. DINAN, ESQUIRE
IAN M. BRYSON, ESQUIRE
Attorneys for Plaintiffs

Dated: March 16, 2017